(1) 8/23/01

No. 01-773

In The

Supreme Court of the United States

JOHN N. BACH, J. D. RITCHIE and ELAINE RITCHIE,

Petitioners,

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, JAMES MASON, CINDY MASON, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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69 pp

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QUESTIONS PRESENTED FOR REVIEW

1. IS A DISTRICT COURT JUDGE WITHOUT OR IN EXCESS OF JURISDICTION, TO SUA SPONTE, WITHOUT ANY NOTICE, ALLOWING OF HEARING OR ARGUMENT TO PRO SE PLAINTIFFS, GRANTS HIS OWN MOTION PER FRCP, RULE 8, TO DISMISS, WHEN NO DEFENDANT HAS MADE SUCH A MOTION?

2. DID THE DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN REFUSING PRO SE PLAINTIFFS ANY FURTHER AMENDMENT TO THEIR COMPLAINT, BY DISMISSING WITH PREJUDICE THEIR FIRST AMENDED COMPLAINT, AGAIN PER RULE 8?

3. DID THE DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN DENYING PRO SE PLAINTIFF'S APPLICATION FOR 90 DAYS MORE TO SERVE ALL DEFENDANTS?

4. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN DENYING PRO SE PLAINTIFFS' MOTIONS OF ENTRY OF DEFAULT AND DEFAULT JUDGMENTS AGAINST RESPONDENTS "THE HARRIS GROUP" AND "THE HARRISES" WHO FAILED TO FILE ANY ANSWERS, AND WHO WERE DENIED BY ORDER LEAVE TO FILE LATE ANSWERS?

5. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN RULING PRO SE PLAINTIFFS COULD NOT STATE VIABLE FEDERAL & PENDENT CLAIMS AGAINST FEDERAL AGENCIES, OFFICIALS, JUDGES, STATE AND PRIVE PERSONS ACTING IN COLLUSION, CONSPIRACIES, CRIMINALITIES AND COMMON

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QUESTIONS PRESENTED FOR REVIEW – Continued

PURSUITS OF RICO ENTERPRISES, PER MULTIPLE LEVELS OF PAR REACHING ACTIONS, POLICIES, ETC., BY ROGUE AND RENEGADE IRS AGENTS AND EMPLOYEES?

6. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN RULING PRO SE PLAINTIFFS WOULD NOT BE ALLOWED TO PURSUE VIABLE FEDERAL CIVIL RIGHTS CLAIMS?

7. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR BY ITS ENTIRE ACTIONS IN DEPRIVING PRO SE PLAINTIFFS OF PROCEDURAL AND SUBSTANTIVE RIGHTS OF DUE PROCESS AND EQUAL PROTECTION AS TO DENY THEM SUBSTANTIAL AND FAIR JUSTICE AS WELL AS ACCESS TO THE PROCESSES OF A FEDERAL COURT?

(Petitioners submit that the only answer to all of the above questions is the word "YES.")

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LIST OF ALL PARTIES

PETITIONERS:

1. JOHN N. BACH — En Pro Se
2. J. D. RITCHIE — En Pro Se
3. ELAINE RITCHIE — En Pro Se

RESPONDENTS:

1. UNITED STATES OF AMERICA
2. INTERNAL REVENUE SERVICE
3. JAMES L. MASON
4. CINDY MASON
5. PHYLIS J. GUGIN
6. MARK DAVIS
7. AL SEEFRIED
8. CHERYL MOSBY
9. KAY MOSHER
10. HESTER PULLING
11. KEITH FARRER
12. JACK CHESKATY
13. GERALD H. MESCHELL
14. RICHARD OWENS

Joan Openheimer
Tax Division,
U.S. Dept of Justice
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Washington, D.C. 20044
(Representing Respondents 1 through 21)

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LIST OF ALL PARTIES – Continued

15. STEVE HINES
16. DONALD JENSEN
17. PAM BIGELOW
18. SID BECKSTEAD
19. CLIVE LONDON
20. MERRY TRUDEA
21. RANDY HARPER
22. EDWARD J. LODGE
23. B. LYNN WINMILL
24. LARRY BOYLE
25. MICHAEL H. WILLIAMS
26. RICHARD WARD
27. BETTY H. RICHARDSON

D. Marc Haws
Ass't U.S. Attny
U.S. ATTORNEY'S OFFICE, IDAHO
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Boise, ID 83707
(Representing Respondents 22-27)

28. BONNEVILLE COUNTY
29. BYRON STOMMEL
30. KAY CORTEZ
31. GINA DIXON
32. CHARLOTTE MUNNS
33. PAUL WILD

Carlton R. Ericson
HAMLIN & SASSER
P.O. Box 16488
Boise, ID 83715
(Representing Respondents 28-49)

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LIST OF ALL PARTIES - Continued

34. GLEN HUDERSON
35. RON LONGMORE
36. P. BLAKE MUELLER
37. JEFFERSON COUNTY
38. CONNIE KELLER
39. BLAIR OLSEN
40. STEPHEN CLARK
41. MADISON COUNTY
42. BETH REESE
43. LYLY SAUREY
44. GREGG MOFFAT
45. TERRY BAIR
46. SID BROWN
47. KIPP MANWARING
48. DAVID SASSER
49. HAMLIN & SASSER
50. ALVA A. HARRIS
51. SCONA, INC.
52. PRO INDIVISO, INC.
53. JARED HARRIS
54. EVELYN HARRIS
55. KENT CARLSON
56. CARALEE CARLSON

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and
ALVA A. HARRIS, P.O. 479,
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(Representing Respondents 50-58, known as "the Harris Group" and "the Harrises")

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57. GRANT E. HANN
58. DARRELL J. HARRIS

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CITATIONS OF OFFICIAL & UNOFFICIAL REPORTS

The short orders from the Ninth Circuit Court of Appeals denying Petitioners' Appeal and Petition for Rehearing En Banc were not to be published and only their respective Docket Numbers identify them No. 99-36180 and DC# CV 982383E – EJG Idaho (Boise).

STATEMENT OF BASIS OF JURISDICTION

1. Appeal Jurisdiction to the Ninth Circuit Court of Appeals was per 28 U.S.C. §§ 1331, 1367, 1391, 18 U.S.C. §§ 1965(a), et seq., and 42 U.S.C. §§ 1983, 1985(2)(3), 1986 and 1988.

2. Petition for Rehearing En Banc, timely filed April 6, 2001, was FRAP, Rule 35(b), CR 35-].

3. Order denying Petition for Rehearing En Banc, May 25, 2001, extended time to file this Petition with Petitioners being given through October 29, 2001 to file Amended/Corrected Petition for Writ of Certiorari. SCR, Rule 13(1), (3).

4. Basis of Jurisdiction and Considerations of Review per this Petition are SCR, Rule 10(a) and (c). The Ninth Circuit by it's "NOT FOR PUBLICATION" Memorandum, and orders of denial "has so far departed from accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power" and "has decided . . . important federal questions . . . conflict[ing] with relevant decisions of this Court."

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CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED IN PETITION

FIRST AMENDMENT TO U.S. CONST.

FOURTEENTH AMENDMENT, SECTION 1., TO U.S. CONSTITUTION

FEDERAL STATUTES

18 U.S.C. §§ 1961-1967
42 U.S.C. § 1983
42 U.S.C. § 1985(2)
42 U.S.C. § 1985(3)
42 U.S.C. § 1986
42 U.S.C. § 1988(b)

FEDERAL RULES OF CIVIL PROCEDURE

Rule 4(m)
Rule 8(a)(2)
Rule 9(b)
Rule 12(b)(5)
Rule 12(b)(6)
Rule 16
Rule 41(b)

STATEMENT OF THE CASE

Petitioners are three of nineteen original plaintiffs, who filed on September 30, 1998, a COMPLAINT against 113 defendants, in grouping designations: A. USA, IRS and officers, agents, etc.; B. Federal Judges of U.S. District Court, Idaho; C. U.S. Attorney's Office, Idaho; D. Various State agencies, officers, etc.; E. An Idaho judge; F. Several Eastern Idaho Counties, officials' employees; G. Two

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Idaho Banks, employees; H. Private individuals and their corporations at IRS properties' sales; I. Others.

The caption took 5 pages, the body some 47 pages, setting forth federal RICO claims of multiple tiered conspiracies, joint enterprises and arrangements of illegal, state, private, IRS collection and levy activities, 18 U.S.C. §§ 1961-1967 federal civil rights claims per 42 U.S.C. §§ 1983, 1985(2)(3), 1986 and 1988, violations of 26 U.S.C. §§ 6402, 7433, et seq, declaratory, injunctive/equitable relief and 8 pendant claims. Attached exhibits were of 21 pages.

Some plaintiffs, including petitioners herein obtained assignments from property owners wrongfully levied on, seeking damages therefrom. The main averments were of conspiracies, joint ventures, enterprises, common plans, concerted actions, etc., of all defendants per multi-tiered RICO violations, including the named judges who acted outside their official capacities, per private and illegal schemes and agreements with the other defendants, but utilized their official positions to hide their involvement and to further advance/protect the illegal RICO enterprises/operations. Like averments include the named Idaho state agencies, county officials, etc.

At the core of these RICO enterprises were James Mason, his wife, Cindy, both IRS agents who with other IRS agents, employees and with private persons, state officials, individually & per their authority, acting under color of law, fueled a money laundering operation based upon false/illegal substitute tax returns prepared by Masons, and others, for petitioners, without petitioners' knowledge or approval, when no tax returns were due

nor taxes due either. Using such contrived tax returns, with assessments, penalty and interest added indiscriminately thereon, Masons and others, received unto themselves a gross 37% bonus from all liened properties and IRS sales of plaintiffs' assets. Such gross 37% bonus was above all other allowed pay, remuneration or benefits to Mason and such others.

Mason and such others targeted plaintiffs for further illegal retaliatory measures, for First Amendment rights' assertions via the "Pilot Connection", an L.D.S. church organization, who with the Oregon Observer Newspaper, were strong advocates of the reform and overhaul of taxpayers' rights. Mason, et al., put out deliberate misinformation and disparagements about plaintiffs (they were militants, bombers, terrorists, etc.) taped their phones, trespassed in their homes, curtailed, assailed, stalked and traumatized plaintiffs, their families, neighbors, employers causing plaintiffs to be obstacized, avoided, etc., by their church, community and others.

After initially serving some respondents, eleven plaintiffs filed motions to be dismissed without prejudice, and stopped further service.

The remaining plaintiffs picked up such service efforts. Respondents appearing pursued a joint strategy of filing motions to dismiss per Rules 4, and 12(b)(5). However, some served defendants ("the Harris Group" and "the Harrises") filed only written appearance but not answers; still other defendants filed answers.

No defendants filed any motions for more definite statement, nor to strike and did not file any Rule 8 motion to dismiss.

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Plaintiffs noticed depositions of the "Harris Group", only to be met with a motion for protective order, which was granted within 3 days of its filings and vacating all discovery "until the matter can be considered further at the FRCP 16 pretrial scheduling conference." No such conference was ever set despite plaintiffs' motion to do so.

June 1, 1999, Judge Edward J. Garcia, assigned from California, issued *sua sponte* without notice, service of any motion/document or setting of hearing therefor, an "ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND" stating " . . . a review of the complaint . . . has caused the court to *sua sponte* issue this order . . . with leave to amend pursuant to Rule 8 . . . " The Order cited *Conley v. Gibson*, 355 U.S. 41, 47 (1957), *McHenry v. Renne*, 84 F.2d 1172 (9th Cir. 1996); and *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981), allowing 30 days to file an amended complaint or the dismissal would be with prejudice. (None of these cited cases supported such sua sponte order, either factually or legally.)

Petitioners immediately filed motions of (1) consolidation with a pending case by IRS against several defendants; (2) to quash, vacate, etc., the June 1, 1999 ORDER, without jurisdiction, violation of due process, etc., (3) for setting of status conference & dates for hearings on all motions; and (4) for additional 30 days to file any AMENDED COMPLAINT.

An Order granting such extra 30 days to file the AMENDED COMPLAINT through August 2, 1999 was complied with by petitioners. (The Court did not rule until July 21, 1999 denying all petitioners' other motions.)

The AMENDED COMPLAINT was 30 pages without any exhibits; actual body, was 25 pages. One of "the Harris Group" filed his answer and motion for summary judgment and to dismiss all others of "The Harris Group" and "the Harrises" again filed general appearances but no answers. Still other defendants filed their Answers, as they did to the original complaint.

The majority of served defendants, combined to file, per the Court's suggestions via the *sua sponte* order, motions to dismiss now per Rule 8, Rules 4, 12(b)(5) and 12(b)(6).

Petitioners filed timely objection/opposition to such motions, requesting hearings be set on each one. They specifically requested/moved the court for another 90 days to be granted to serve all defendants, which requests were never addressed.

August 27, 1999 petitioners filed motions for (1) Entry of Default and Default Judgments against all members/corporations of the Harris Group and Harrises; (2) Striking, etc., any motions by such Harris, etc., and (3) for immediate Permanent Injunctions, etc., against named defendants, restraining purchased properties of petitioners from being resold, the return thereof to petitioners all properties and monies obtained from such illegal RICO sales, etc. A full evidentiary hearing was requested.

October 21, 1999, without any hearing allowed, there issued an ORDER OF DISMISSAL (With Prejudice) of the AMENDED COMPLAINT, per Rules 8 and 41(b) citing the same cases as in the June 1, 1999 ORDER, and giving alternative reasons for dismissal per Rules 12(b)(5), 4(m)

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and 12(b)(6). Said ORDER denied all of petitioners' filed motions.

A NOTICE OF APPEAL was timely filed, and also a request for oral argument on appeal. The Ninth Circuit Court on February 21, 2001 issued a "NOT FOR PUBLICATION" MEMORANDUM holding "We review for abuse of discretion a district court's Fed. R. Civ. P. 41(b) dismissal and affirm." See *McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996)."

A timely Petition for Rehearing En Banc was filed which on May 25, 2001, was denied.

ARGUMENT

I. PREFACE

The district court's without jurisdiction and abuse of discretion rulings, reveal the exemplified judicial antagonism and revulsion of pro se litigations, denying constitutional rights, plus, not only legal but judicial ethics. Why is it that fundamental constitutional rights of access to the courts require prison authorities to assist inmates, via adequate libraries or adequate assistance from persons trained in the law but pro se petitioners as herein, are not given their due process and equal protection rights? See *Bounds v. Smith*, 430 U.S. 817, 828 (1977).

No case authorities are to be found, upon the facts presented herein which give any district court sua sponte jurisdiction to dismiss per Rule 8 a pro se complaint. In fact, case authorities are over-whelmingly to the contrary.

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> "Failure, in an initial complaint to set forth the claim by means of a short and plain statement as required by Rule 8(a)(2) is not a ground for dismissal . . . with prejudice, since . . . procedures are available for correcting a vague and prolix complaint. See *Glus v. Brooklyn Eastern District*, 356 U.S. 231, 234, . . . procedures are those provided for in Rule 12(e) . . . (motion for more definite statement); Rule 12(f) . . . (. . . to strike portions of the pleading); Rule 15 (right to amend); Rule 16 (pretrial procedure and formulation of issues); Rules 26-37 (depositions and discovery). . . . it is to be borne in mind that the spirit of the Federal Rules of Civil Procedure requires us to construe the pleadings most strongly in favor of the pleader. [Citation omitted] A liberal construction of the pleadings is especially called for where they were prepared by a layman. *Downing v. New Mexico State Supreme Court*, 10 Cir. 339 F.2d 435, 436 . . . "

DeWitt v. Pail, 366 F.2d 682, 685 (9th Cir. 1966); see *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); *Marshall v. Sawyer*, 301 F.2d 639, 647 (9th Cir. 1962). (*See* further cases, "II" *infra*.)

II. DISTRICT COURT WITHOUT JURISDICTION TO DISMISS PRO SE COMPLAINT, FIRST WITH LEAVE TO AMEND AND THEN WITH PREJUDICE PER RULE 8, WHEN NO DEFENDANT INITIALLY HAD MADE SUCH MOTIONS.

Two questions present themselves: (1) What authority is there for a district court, without any notice and where no respondent has raised a Rule 8 motion to issue a Rule 8 Order dismissing the complaint with leave and directing each plaintiff to set forth separate counts

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against each defendant; and (2) What procedural and substantive violations of due process and equal protection are inflicted upon pro se plaintiffs thereby? ANSWERS: None; and Many.

Petitioners have found no statutory law, no rules nor even case law, that give a district court such jurisdiction, discretion, to issue such orders as presented for review herein.

As stated in *Conley v. Gibson*, 355 U.S. 41, 48 (1957): "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." (But of *Bautista v. L.A. County*, 216 F.3d 837 (9th Cir. 2000)).

The initial and AMENDED COMPLAINT gave "fair notice of what petitioners' claims [were] and the grounds upon which it rested." The length of a complex multi-tiered RICO and civil rights claims asserted complaint is not in and of itself a proper basis for the two Rule 8 ORDERS of dismissal. As stated in *Atwood v. Humble Oil & Refining Co.*, 243 F.2d 885, 889 (5th Cir. 1957):

> " . . . the Court could have accomplished by measures . . . adapted to the end desired and much less drastic than putting the plaintiffs entirely out of the court. Was the complaint redundant, repetitious, argumentative, verbose? If so, the offending portions could be stricken. Did it contain scandalous or impertinent matter? These could be eliminated by like procedure. Rule 12(f) . . . Humble evidently did not find these offensive elements . . . because it moved

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for amplification of portions of it rather than for abbreviation.

> . . . the pretrial procedures so carefully followed . . . afforded ample means by which the issues could be simplified . . . after extensive pre-trial hearings the Court reduced the issues it understood to be embraced within the complaint to seven, which it memorialized by a proposed order occupying but six pages in the record. Rule 16 . . . empowered the court to enter this order or one like it with such effect as would have controlled 'subsequent course of the action.'[6] But the Court did not enter the order it has so carefully worked out and did not pass specifically upon the objections plaintiffs addressed in writing to the order as drawn and did not specify wherein the additional counts they submitted failed to meet the Court's view.
>
> The pleadings, the orders of the court, and the arguments reflect that the issues involved in this case are many and varied, the amount of money sought is very large one, the leases involved are long and complicated of some length would be required to get all of the contentions presented by such a situation before the Court:[1] "What is a 'short and plain' statement depends of course on the circumstances of the case." 2 Moore's Federal Practice, 2d Ed., p. 1653. There may be cases in which mere verbosity or repetition would justify final dismissal by a trial court, but this is not, in our opinion such a case . . . "

In *Atwood*, the original complaint was 46 pages plus 74 pages of exhibits, and the many theories of recovery advanced appeared "complex and prolix."

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In *Burke v. Dowling*, 944 F. Supp. 1036 (E.D.N.Y. 1995), 1049, the court stated:

> "To be sure, plaintiffs' complaint is lengthy. It contains 115 pages and 231 numbered paragraphs and sets forth seven causes of action by thirty-three plaintiffs against ten defendants. But 'long and involved complaints do not per se fail to pass the test of sufficiency under Rule 8.' *Karlinsky v. New York Racing Ass'n*, 52 F.R.D. 40, 42 (S.D.N.Y. 1971) In view of the complexity of the schemes alleged, and the requirement of Rule 9 . . . the Amended Complaint does not seem inordinately long."
>
> [Page 1050] "Plaintiffs . . . have made allegations that are neither vague nor incomprehensive. At a minimum they place the defendants on notice of the charges against them and allow them sufficient opportunity to prepare a response. Nor are the allegations framed in a manner that places an inordinate burden on this court or opposing counsel . . . the complaint meets the standard of Rule 8.[2]"

The district court's sua sponte order and final order, violated this Court's holding in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination*, 507 U.S. 163, 168, 122 L. Ed. 2d 517, 524, 113 S. Ct. 1160 (1993), that except as provided in Rule 9(b) there are no heightened rules of pleading allowed. (See *Fobbs v. Holy Cross Health System*, 29 F.3d 1439, 1449 (1994).

Petitioners' original and amended complaints averred theories of conspiracies of RICO violations of multi-tiered levels among more than one illegally operated enterprises by 113 defendants, conducting, aiding

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supporting/participating with each other and all respondents, outside the law, while utilizing their respective government positions under color of state law and federal law or authorities. Such averments are supported by this Court's decision in *U.S. v. Turkette*, 452 U.S. 576, 583 (1981); followed in *Humana, Inc. v. Forsyth*, 119 S. Ct. 710 (1999), and most recently in *Cedric Kushner v. Don King, et al.*, 121 S. Ct. 2087 (June 11, 2001). See also *U.S. v. Thompson*, 685 F.2d 993 (6th Cir. 1982).

Respondents "the Harris Group" and the "Harrises" are persons who unlawfully used enterprises, both legitimate and illegitimate, as vehicles through which their unlawful RICO activities continue to be committed against petitioners. The respondent judges are like persons who unlawfully used an enterprise, legitimately and illegitimately, their court, as a vehicle through unlawful RICO activity continues. *Averbach v. Rival Mfg. Co.*, 809 F.2d 1016, 1018 (3rd Cir.), cert. den., 482 U.S. 915 (1987) (federal court may be such an enterprise). See *U.S. v. Frega*, 179 F.3d 793 (9th Cir. 1999) (3 San Diego Superior Court judges convicted of RICO scheme and enterprise with attorney who they agreed to issue/give favorable rulings, coercing settlements in his favor in return for sharing of monetary favors, accommodations from such attorney's car dealer clients in auto purchases, exchanges, etc.) *U.S. v. Benny*, 559 F. Supp. 264, 270-71 (N.D. Cal. 1983), aff'd, 786 F.2d 1410 (9th Cir. 1983), cert. den., 479 U.S. 1017 (1986) (Court and government agencies may be such enterprises); *U.S. v. Conn.*, 769 F.2d 420 (7th Cir. 1985) (Cook County Circuit Court may be such an enterprise) and *U.S. v. Thompson, supra* (Office of Tennessee governor may be such enterprise).

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All petitioners' civil rights claims were viable; the facts deemed admitted of both the original and amended complaint per Rule 12(b)(6). Moreover, any claimed immunities simply had to be pled affirmatively and proven through discovery and summary judgment motions; there were no absolute immunities raised nor applicable as a matter of law. *Burns v. Reed*, 500 U.S. 478, 114 L. Ed. 2d 547, 111 S. Ct. 1934, 1939 (1991); *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S. Ct. 2606, 2613, 125 L. Ed. 2d 209 (1993). See *Sanders v. Union Pac. R.R. Co.*, 193 F.3d 1080, 1081 (9th Cir. 1999) (Judges' renegade ultra vires acts afford no immunities). See also *Milstein v. Cooley*, 257 F.3d 1004 (9th Cir. 2001); *Rankin v. Howard*, 633 F.2d 844 (9th Cir. 1980), cert. den., 101 S. Ct. 2020, 68 L. Ed. 2d 326 (1981) (A judges' private, prior agreement to decide in a party's favor is not a judicial act and he has no immunity.); *Haddle v. Garrison*, 525 U.S. 489, 119 S. Ct. 489 (1998) (upholding claim per 42 U.S.C. § 1985(2)(3) of conspiracy to intimidate or retaliate against witnesses in federal court proceedings, etc.).

In the Ninth Circuit, a section 1983 claim is sufficient on nothing more than a bare allegation that an individual officer's or public official's conduct, conformed to official policy, custom, usage or practice. *Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988). See also *Fobbs v. Holy Cross Health Systems*, 29 F.2d 1439, 1449 (1994), (Plaintiff can aver more than one theory of conspiracy, i.e. of multiple conspiracies & coverups.)

The district court failed to investigate the numerous canards presented to it by respondents, especially, that respondents had not been properly served, such as the federal judges who were served via the Clerk of their

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court who signed a written statement that he had been authorized to accept personal service on behalf of all federal judges, since security prevented any other service on the judges. See *U.S. v. Lapage*, 231 F.3d 488 (9th Cir. 2000) (Court to investigate lies or deception of any party or party's attorney or their witnesses.)

The two cases cited by the district court, *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996) and *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981) (both 9th Circuit decisions) gave licensed plaintiffs' attorneys at least 3 times to amend their pleadings and with special assistance via directions from the court, before issuing a Rule 8 dismissal order. Factually and legally they do not provide any authority for either of said two orders of dismissal. See also *Moscowitz v. Brown*, 850 F. Supp. 1185 (S.D.N.Y. 1994) (Plaintiff given 3 opportunities to replead).

At bar, the district court's mindset is revealed as such, that under no circumstance would pro se petitioners who brought such a multiple tiered RICO claim involving federal judges, state agencies, etc., get more than one opportunity to amend their pleadings, that no discovery would be allowed them nor were they to be accorded due process or equal protection or a hearing before the court, either on their motions or at a status or pretrial scheduling conference. Even the default status of "the Harris Group" and "the Harrises" was convolutedly denied and eviscerated by the court's October 21, 2000 ORDER OF DISMISSAL WITH PREJUDICE despite petitioners' motions unopposed and further, the court's own order denying such respondents' attempt at leave to file any late answers.

III. DISTRICT ABUSED ITS DISCRETION AND ERRED IN NOT GRANTING FURTHER LEAVE TO AMEND.

Petitioners incorporate their arguments per all parts, *supra*, herein.

Petitioners have at all time herein contended, that the IRS as established and lawfully operating is not a racketeering enterprise per se. (Others are left to wax and wane on such claims) They did aver, that a group of rogue, criminally operating and unconstitutionally acting IRS agents, along with all other defendants, as aforesaid, were conducting, with at least two prior predicate acts, RICO enterprises, deriving tax moneys, outside the law, sharing a gross 37% bonus money payments from liened property sales, at which sales, such properties in further violations were sold at extremely low amounts to "the Harris Group" and "the Harrises" even when bankruptcy court's automatic stay or freeze orders against such sales were in effect, and that such 37% bonus was laundered, distributed, shared and secretly benefited from by all other defendants, who provided such rogue and criminally acting IRS agents with protection at various federal and state levels.

All petitioners' efforts at discovery of their aforesaid motions for not only default judgments against "the Harris Group" and "the Harrises" but especially for permanent injunctive relief, etc., were unconstitutionally treated, without full evidentiary hearings, no status or pretrial scheduling conferences being held, and denied by unsupported reasons within the October 21, 1999 ORDER OF DISMISSAL WITH PREJUDICE.

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Under the factual circumstances, such October ORDER is unsustainable as with prejudice and petitioners should have been granted and must be granted a further opportunity to amend their complaint.

IV. DISTRICT COURT ABUSED ITS DISCRETION, AND ERRED IN NOT GRANTING PETITIONERS 90 DAYS MORE TO SERVE ALL RESPONDENTS

As stated, *supra*, respondents by not objecting to the district court's sua sponte order of June 1, 1999 to dismiss with leave per Rule 8, where/when none of them had made such a motion, did in fact and legal effect all make general appearances. Any of their motions to dismiss per Rules 4(m) and 12(b)(5) were invalid if not deceptive.

Petitioners made requests and application to the district court for the additional time of 90 days, but no effort was made to consider let alone grant such request since the court was of an already controlling mindset to dismiss the complaint with prejudice. But as stated *supra*, such could not and should not have been the court's order.

Under the 1993 Amendments to the Federal Rules, a district court has been accorded discretion to enlarge the 120 days period for service of process "even if there is no good cause shown " *Henderson v. U.S.*, 57 U.S. 65, 663, 116 S. Ct. 1638, 1643 (1996). (Citing Advisory Committee Notes, Rule 4, 28 U.S.C. App., page 654, that Rule 4(m) "authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is not good cause."

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The Ninth Circuit decisions in *De Tie v. Orange County*, 152 F.3d 1109, 1112 (9th Cir. 1998); *Electrical Specialty Co. v. Road Ranch Supply, Inc.*, 967 F.2d 309 (9th Cir. 1992); and *Boudette v. Barnette*, 923 F.2d 754, 756, required the issuing of said order requested of another 90 days to serve all respondents.

V. DISTRICT COURT ABUSED ITS DISCRETION IN DISMISSING RICO AND CIVIL RIGHTS CLAIMS PER RULE 12(b)(6)

Petitioners incorporated all prior arguments, *supra*, herein.

Petitioners' original and amended complaints set forth a good number of RICO claims against all defendants. The district court in both of its said ORDERS, June 1 and October 21, 1999, chose to absolutely ignore/failed to address such RICO averments, and simply chose to further avoid the numerous averments of conspiracies, joint ventures, concerts of action, commonality of plans, policies, actions and criminal conducts, etc., among all defendants at multiple levels of such conspiracies.

Petitioners averred more than a minimum of conspiracies and agreements among and between all defendants and more than the commission of 2 predicate acts. They were not required to plead their proof, evidence or even the fact that defendants gave their overt assent to such conspiracies, since such assent is met through the inference from each defendant's act in furtherance of the numerous conspiracies averred. *Federal Information System Corporation v. Boyd*, 754 F. Supp. 971, 975-978 (D.D.C. 1990).

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This Court in *Cedric Kushner v. Don King*, decided June 11, 2001, *supra*, stated:

> "Linquistically speaking, an employee who conducts the affairs of a corporation through illegal acts comes within the terms of a statute that forbids any 'person' unlawfully to conduct an 'enterprise,' particularly when the statute explicitly defines 'person' to include 'any individual . . . capable of holding a legal or beneficial interest in property' and defines 'enterprise to include corporation.' 18 U.S.C. §§ 1961(3), (4) And linguistically speaking, the employee and the corporation are different 'persons,' even where the employee is the corporation's sole owner. . . . RICO both protects a legitimate 'enterprise' from those would use unlawful acts to victimize it. *United States v. Turkette*, 452 U.S. 576, 591 (1981), and also protects the public from those who would unlawfully use an 'enterprise' (whether legitimate or illegitimate) as a "vehicle" through which 'unlawful . . . activity is committed.' *National Organization for Women, Inc.*, 510 U.S. at 259.
>
> A corporate employee who conducts the corporation's affairs through an unlawful RICO 'pattern . . . of activity,' § 1962(c), uses that corporation as a 'vehicle' whether he is, or is not, its sole owner."

Thusly, it is not only "the Harris Group", the "Harrises", or the Masons and all other named IRS rogue agents which were averred to be so conducting an unlawful RICO pattern of activity but also said federal judges, the U.S. attorney's office in Boise, Idaho and Idaho State agencies and officials thereof, with all other defendants, per further multi-tiered levels of conspiracies.

In *Mendocino Environment Center v. Mendocino County*, 14 F.3d 457, 465 (9th Cir. 1994), it was stated:

> " . . . governmental 'action designed to retaliate against and chill political expression strikes at the heart of the First Amendment.' *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986), cert. denied, 479 U.S. 1054, 107 S. Ct. 928, 93 L. Ed. 2d 979 (1987) . . . 'Accordingly, the victim of such action is entitled to sue the responsible officers . . . where a plaintiff 'alleges' discrete acts of . . . surveillance and intimidation directed solely at silencing' him or her, a civil rights claim will lie . . . "

See also *Haddle v. Garrison*, 525 U.S. 489, 1195 S. Ct. 489 (1998); *Rizzo v. Goode*, 423 U.S. 362, 377 (1976).

The district court's reliance on *Billings v. U.S.*, 57 F.3d 797, 801 (9th Cir. 1995), that a 1983 claim does not lie against federal agents is not only incorrect, but is distortively cited. As stated at page 801; " . . . federal employees, like private individuals, can act under color of state law if they conspire or act in concert with state officials to deprive a person of her civil rights [citations omitted] . . . " Plaintiff averred multiple conspiracies between federal judges, I.R.S. agents, with numerous state officials, private defendants and for profit corporations. Plaintiff also averred all defendants acted with other concerts of action, in joint ventures and enterprises with each other.

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VI. DISTRICT COURT VIOLATED PRO SE PETITIONERS' RIGHTS TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION

The extent of the district court's mindset and judicial improprieties, are more egregious when intended to deprive elderly pro se litigants of access to it to have viable claims redressed by a court of last resort for them.

To paraphrase the late Justice Cardozo: "Even a sleeping dog knows the difference of his being stumbled upon or that of being deliberately kicked."

What petitioners seek is not special preference, treatment or even privilege, but equal consideration of their claims, fairly, justly, with substantial application and perfection of due process and equal protection of the laws. Such was denied them by the district's said two ORDERS.

See *Zinermon v. Burch*, 494 U.S. 113, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990).

VII. CONCLUSION

This Petition for Writ of Certiorari should be granted upon all grounds, basis or points raised and those inherently included therein or part thereof.

DATED: October 26, 2001

JOHN N. BACH
J. D. RITCHIE
ELAINE RITCHIE

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APPENDIX

1. "NOT FOR PUBLICATION" MEMORANDUM Feb. 21, 2001, U.S.C.A., Ninth Circuit, No. 99-36180 ..... App. 1

2. ORDER OF DISMISSAL [With Prejudice], Oct. 21, 1999 USDC, Idaho 98-383-E-EJG ..... App. 5

3. ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND, June 1, 1999 USDC, Idaho 98-383-E-EJG ..... App. 23

4. ORDER, May 25, 2001, U.S.C.A., Ninth Circuit, No. 99-36180, Denying Petition for Rehearing en banc ..... App. 28

5. FIRST AMENDMENT TO U.S. CONSTITUTION ..... App. 29

6. FOURTEENTH AMENDMENT TO U.S. CONSTITUTION, Section 1 ..... App. 29

7. STATUTES:

   a) 42 U.S.C. § 1983 ..... App. 30

   b) 42 U.S.C. § 1985(2) ..... App. 31

   c) 42 U.S.C. § 1985(3) ..... App. 31

   d) 42 U.S.C. § 1986 ..... App. 32

   e) 42 U.S.C. § 1988(b) ..... App. 33

8. ORDER DENYING DEFENDANTS' REQUEST FOR ADDITIONAL TIME TO FILE ANSWER, Sept. 1, 1999 ..... App. 35

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN N. BACH; GAREN HANCOCK; DETSEL J. PARKINSON; A. DEAN BOWLES; BETTY J. BOWLES; JABEZ D. RITCHIE; ELAINE RITCHIE,

Plaintiffs-Appellants,

v.

CINDY MASON; PHYLIS J. GUGIN; MARK DAVIS; AL SEEFRIED; CHERYL MOSBY; KAY MOSHER; HESTER PULLING; KEITH FARRER; JACK CHESKATY; GERALD H. HESCHELL; RICHARD OWENS; STEVE HINES; DONALD JENSEN; PAM BIGELOW; SID BECKSTEAD; CLIVE LONDON; MERRY TRUDEAU; RANDY HARPER, Federal agencies and officers, Internal Revenue Service; EDWARD J. LODGE; B. LYNN WINMILL; LARRY BOYLE; MICHAEL H. WILLIAMS, Federal Judges; RICHARD WARD;

No. 99-36180

D.C. No. CV-98-00383-EJG

MEMORANDUM[1]

(FILED Feb. 21, 2001)

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

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BETTY RICHARDSON, United States Attorneys Office; BONNEVILLE COUNTY; BONNEVILLE COUNTY SHERIFF; BYRON STOMMELL; KAY CORTEZ; GINA DIXON; CHARLOTTE MUNNS; PAUL WILD; GLENN HUDERMAN; BONNEVILLE COUNTY CLERK; RON LONGMORE; BONNEVILLE COUNTY ASSESSOR; JEFFERSON COUNTY; JEFFERSON COUNTY RECORDER; JEFFERSON COUNTY SHERIFF; BLAIR OLSEN; JEFFERSON COUNTY PROSECUTOR; ROBIN DUNN; STEPHEN CLARK; MADISON COUNTY, IDAHO; MADISON COUNTY RECORDER; BETH REESE; MADISON COUNTY ASSESSOR; LYLE SAUREY; MADISON COUNTY SHERIFF; GREGG MOFFAT; TERRY BAIR: MADISON COUNTY PROSECUTOR; SID BROWN; KIP MANWARING; PRO INDIVISO, INC., an Idaho Corp.; SCONA, INC., an Idaho Corp., ALVA A. HARRIS; JARED HARRIS; EVELYN HARRIS; KENT CARLSON; CARELEE CARLSON;

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GRANT E. HANN; DARRELL J. HARRIS; RAY RIGBY,

Defendants-Appellees,

and

STATE OF IDAHO TAX COMMISSION; DARYL JONES; ATTORNEY GENERAL'S OFFICE; ALAN G. LANCE; IDAHO STATE BAR, State agencies and officers; RICHARD J. ST. CLAIR, Judge; TED W. WOOD, Judge; FREMONT COUNTY, IDAHO; FREMONT COUNTY PROSECUTOR; FREMONT COUNTY SHERIFF; TERRY THOMPSON; FREMONT COUNTY CLERK & RECORDER; MICKIE FUNKE; JEROME COUNTY; JEROME COUNTY SHERIFF; JEROME COUNTY CLERK; TETON COUNTY, IDAHO; TETON COUNTY CLERK; TETON COUNTY ASSESSOR; CITY OF ST. ANTHONY; CITY POLICE; MAYOR, CITY OF ST. ANTHONY; ROY PARKER; CITY ATTORNEY, CITY OF ST. ANTHONY; LISA BERTOSCH; TIM WILSON; CARLTON ERICKSON; ST. ANTHONY CITY COUNCIL; EVELYN MASON;

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RICHARD LAW; US BANK/ WEST ONE BANK; MARK BYERLY; LARRY DROLLINGER; NELDA DROLLINGER; JOHN SANDERS; BRUCE OLSEN; WILLIAM TULLOCK; BOBBIE SUE TULLOCK; DOES 1-200,

Defendants.

Appeal from the United States District Court
for the District of Idaho
Edward J. Garcia, District Judge, Presiding

Submitted February 12, 2001[2]

Before: LEAVY, THOMAS, and RAWLINSON, Circuit Judges.

Appellants appeal pro se the district court's dismissal of their action with prejudice for failing to comply with the court's order to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion a district court's Fed. R. Civ. P. 41(b) dismissal and affirm. *See McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996).

The clerk shall file appellants' additional reply briefs previously received on May 26, 2000, and June 8, 2000. The requested relief contained therein is denied.

AFFIRMED.

[2] Because we unanimously find this case suitable for decision without oral argument, we deny appellants' request for oral argument. *See* Fed. R. App. P. 34(a)(2).

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

JOHN N. BACH, et al.,

Plaintiffs,

v.

JAMES L. MASON, et al.,

Defendants.

_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER OF DISMISSAL

This matter is before the court on various motions. Specifically, the following defense motions have been made: (1) the IRS defendants[1] and defendant Richard Wards' motion to dismiss; (2) the Bonneville County defendants,[2] the Jefferson County defendants,[3] the Madison County defendants,[4] defendant David Sasser, and

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[1] The IRS defendants consist of James Mason, Cindy Mason, Phylis Gugin, Mark Davis, Al Seefried, Cheryl Mosby, Kay Mosher, Hester Pulling, Keith Farrer, Jack Cheskaty, Gerald Heschell, Richard Owens, Steve Hines, Donald Jensen, Pam Bigelow, Sid Beckstead, Clive London, Merry Trudeau, and Randy Harper.

[2] The Bonneville County defendants consist of Bonneville County, Bonneville County Sheriff Byron Stommel, Kay Cortez, Gina Dixon, Charlotte Munns, Paul Wild, Glenn Huderman, Bonneville County Clerk Ron Longmore, and Bonneville County Assessor P. Blake Mueller.

[3] The Jefferson County defendants consist of Jefferson County, Jefferson County Recorder Connie Keller, Jefferson County Sheriff Blair Olson and Stephen Clark.

[4] The Madison County defendants consist of Madison County, Madison County Recorder Beth Reese, Madison County Assessor Lyle Saurey, Madison County Sheriff Greg Moffatt,

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was reassigned to the undersigned of the Eastern District of California.

Thereafter, this court allowed six of the plaintiffs to withdraw from the action. By this time, many of the defendants had filed motions to dismiss. Nevertheless, on June 1, 1999, the court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, without prejudice, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. On June 15, 1999, the plaintiffs sought and were granted a thirty day extension of time in which to file their amended complaint. Plaintiffs' amended complaint was then filed on August 2, 1999.[6] In response, the above listed motions were filed and the court now issues the following order.

DISCUSSION

A. Federal Rule of Civil Procedure 8

On June 1, 1999, this court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, with leave to amend, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. In that order, the court specifically listed the complaint's major flaws and then set forth some basic pleading requirements for plaintiffs to adhere to when they drafted their amended complaint. The court cautioned plaintiffs that failure to amend so as

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[6] The order granting plaintiffs an extension of time to file their amended complaint stated that the complaint needed to be filed with the court by August 1, 1999. However, since August 1 was a Sunday, plaintiffs properly filed their complaint on Monday, August 2.

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to comply with Rule 8 could result in dismissal with prejudice. After receiving a thirty day extension, plaintiffs filed their amended complaint on August 2, 1999.

Now, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardson move to dismiss the amended complaint pursuant to Rule 8. A complaint which fails to comply with Rule 8 may be dismissed with prejudice pursuant to Rule 41(b). *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981). Rule 41(b) provides in part that a defendant may move for dismissal of an action if a plaintiff fails to comply with the Federal Rules of Civil Procedure or an order of the court.

Although plaintiffs in the instant action have made cosmetic changes to their complaint, it still does not comply with either Rule 8 or this court's previous order. In fact, the amended complaint is as confusing, verbose, and unintelligible as the original complaint. In addition, it still lacks the required specificity. For example, plaintiffs' principal allegations regard the seizure of their properties. Yet plaintiffs do not make clear exactly which properties were seized, exactly which defendants seized these properties, and exactly when these seizures occurred. Conclusory allegations do not give the defendants fair notice of what the plaintiffs' claims are and the grounds upon which they rest. *See Conley v. Gibson*, 355 U.S. 41, 47 (1957).

Moreover, it appears that plaintiffs have all but ignored this court's pleading suggestions. For instance, in the order this court stated that "plaintiffs must specify which defendants are liable for which claims. Some of the

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claims cannot be pled against all of the defendants." Despite this admonition, plaintiffs have attempted yet again to bring most of the federal claims against all of the defendants. As discussed more fully below, this is improper. Also in the order, the court noted that "the complaint contains hardly any dates." Plaintiffs have not corrected this flaw in the amended complaint thus making it difficult for the court to determine whether their complaint is time-barred. Lastly, despite being told to do so, plaintiffs have failed to specify which facts support which of their claims.

Before dismissing an action under Rule 41(b), however, a district court should first attempt other less drastic alternatives. *See Nevijel*, 651 F.2d at 674. "These less drastic alternatives [can] include allowing further amended complaints, allowing additional time, or insisting that [the party] associate experienced counsel." *Id*. This court has tried less drastic alternatives in this case to no avail. First, the court allowed plaintiffs to amend their complaint after giving them explicit drafting instructions. Second, the court granted plaintiffs a thirty day extension of time in which to file their amended complaint. Lastly, the court directed the plaintiffs to read Rule 11 of the Federal Rules of Civil Procedure and noted that Rule 11's sanction provision applies to parties in *pro per*. Despite this warning, plaintiffs have not indicated to the court that they wish to hire an attorney. Accordingly, the court finds that dismissal of this action under Rule 41(b) with prejudice is appropriate.

Again, the court recognizes that the plaintiffs are proceeding without legal counsel. However, "[p]ro se litigants must follow the same rules of procedure that

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govern other litigants." *King v. Ativeh*, 814 F.2d 565, 567 (9th Cir. 1987). In addition, the lead plaintiff in this case, John Bach, is a former attorney. He is therefore presumably capable of drafting a comprehensible and legally sufficient complaint setting forth plaintiffs' claims.

For the above reasons, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted with prejudice. The action is also dismissed with prejudice as to all defendants on this basis. *See Silverton v. Department of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) (*sua sponte* dismissal of action against non-moving defendants is appropriate where "such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related").

Although this ruling disposes of the entire action, some of the defendants have moved to dismiss plaintiffs' complaint on other grounds. As discussed below, these grounds provide alternative reasons for dismissing plaintiffs' complaint.

B. Federal Rule of Civil Procedure 4(m)

A Rule 12(b)(5) motion to dismiss for insufficiency of service of process has been made in all of the defense motions except for Jared Harris'. Specifically, these defense motions contend that plaintiffs have failed to comply with Rule 4(m) of the Federal Rules of Civil Procedure.

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Rule 4(m) requires dismissal without prejudice when a defendant is not served with a copy of the summons and complaint within 120 days after the filing of the complaint. Here, plaintiffs filed their original complaint on September 30, 1998. Thus, the 120 day period would have expired on January 28, 1999. The moving defendants have submitted affidavits which demonstrate that none of them were served within the 120 day period required by Rule 4(m).[7]

Nevertheless, Rule 4(m) requires a court to extend the time for service for an appropriate period if the plaintiffs show good cause for the failure to effect timely service. If good cause is not shown, it is discretionary with the court whether to grant an extension or whether to dismiss the action without prejudice. In this case, plaintiffs have not explained their failure to effect timely service of the original complaint. In fact, plaintiffs have also failed to timely serve all of the defendants with a copy of the amended complaint.

Therefore, the court could dismiss this action against the moving defendants without prejudice pursuant to Rule 4(m). However, the court has already concluded that dismissal of this action against all defendants should be with prejudice for plaintiffs' failure to comply with Rule 8. This resolution makes it unnecessary for the court to dismiss the action without prejudice per Rule 4(m) or to decide the other service of process motions that defendants have filed.

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[7] The court also notes that there are many other defendants in this case which have not been timely served or have never been served.

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C. Federal Rule of Civil Procedure 12(b)(6)

Next, the IRS defendants, defendant Richard Ward, and defendant Jared Harris have filed various motions to dismiss pursuant to Rule 12(b)(6) for failure of plaintiffs' complaint to state claims upon which relief can be granted. The sufficiency of each of the federal claims will be briefly discussed below.

1. RICO Claim

Plaintiffs first allege that defendants have violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* To state a claim under RICO plaintiffs must demonstrate: (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *See Sun Savings and Loan Association v. Dierdorff*, 825 F.2d 187, 191 (9th Cir. 1987). In addition, plaintiffs must allege a causal connection between the pattern and the injury to the plaintiffs. *See Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996).

In the amended complaint, plaintiffs make the following allegations regarding RICO:

> All of said defendants and each of them, have engaged, participated and conduct, and continue this date to so conduct themselves, having committed more than two (2) predicate acts involving interstate commerce, so as to violated, jointly and severally, in multi-layers of illegal and corrupt activities and pursuits, the Federal R.I.C.O. Act, 18 U.S.C. §§ 1961-1068. See Amended Compl. ¶ 28.)

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These general and conclusory allegations fail to state a RICO claim. These statements fail to identify the actions of each defendant or to allege the predicate acts necessary to allege a pattern of racketeering activities with the requisite specificity. Accordingly, plaintiffs' RICO claim is dismissed for failure to state a claim upon which relief can be granted.

2. 26 U.S.C. §§ 6331, 6343, and 7426

Next, plaintiffs allege that some of the defendants have violated 26 U.S.C. §§ 6331, 6343, and 7426. Section 6331 authorizes the federal government to levy upon, distrain, and seize the property or property interests of taxpayers who neglect or refuse to pay taxes. Section 6343 provides the basis for releasing property which has been levied upon. Neither section provides for a right of action.

Section 7426 provides that a third party may file a civil action against the United States in federal court as the remedy for a wrongful levy. This section is not applicable here because first the United States is not a named defendant and second the plaintiffs are the taxpayers levied upon and not third parties. (*See* Amended Comp. §§ 18-19.) Thus, these claims are also dismissed.

3. 26 U.S.C. §§ 7433 and 6343(a)

Plaintiffs also allege that 26 U.S.C. §§ 7433 and 6343(a) were violated. Section 7433 authorizes taxpayers to bring a civil action for damages against the United States for certain unauthorized collection actions. The

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only authorized defendant under this code section, however, is the United States. Since the United States is not a named defendant in this action and since plaintiffs cannot bring an action under this section against the other defendants, this claim must be dismissed. Plaintiffs' allegations under section 6343 have already been discussed and dismissed above.

4. 26 U.S.C. § 7432 and 28 U.S.C. § 2410

Plaintiffs allege next that 26 U.S.C. § 7432[8] and 28 U.S.C. § 2410 were violated. Section 7432 of Title 26 authorizes civil damages for failure of an officer or employee of the IRS to release a lien. Section 2410 of Title 28 permits the United States to be named as a party in certain actions affecting property on which the United States has a lien. Only the United States can be sued under these two code sections. Since the United States is not a named defendant in this action, these claims must be dismissed.

5. 42 U.S.C. § 1983

Plaintiffs have alleged numerous claims pursuant to 42 U.S.C. § 1983. However, plaintiffs improperly attempt to bring these claims against *all* of the defendants. As noted in the court's previous order, claims under 42 U.S.C. § 1983 can only be brought against individuals acting under color of state law. *See Billings v. United*

[8] The code section plaintiffs cite. 28 U.S.C. § 7432, does not exist so the court assumes that plaintiffs meant to cite 26 U.S.C. § 7432.

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States, 57 F.3d 797, 801 (9th Cir. 1995). Accordingly, plaintiffs' § 1983 claims must be dismissed to the extent that they are brought against individuals acting under color of federal law or non-governmental individuals.

With that in mind, the court now turns to plaintiffs' various § 1983 claims.

a. First Amendment

Plaintiffs allege in a conclusory fashion that their rights as established by the First Amendment were violated. Plaintiffs do not specify what the First Amendment violation is or the facts supporting it. Since plaintiffs make no allegations supporting their claim that their constitutionally protected right to free speech was violated, this claim is dismissed.

b. Fifth Amendment

Next, plaintiffs allege, pursuant to 42 U.S.C. § 1983, that *all* of the defendants violated their rights under the Fifth Amendment. However, the Fifth Amendment applies to and restricts only the federal government and federal actors. *See Geneva Towers Tenants Organization v. Federated Mortgage Investors*, 504 F.2d 483, 487 (9th Cir. 1974). As noted above, claims under 42 U.S.C. § 1983 cannot be brought against individuals acting under color of federal law. Thus, the Fifth Amendment allegations are improper and are accordingly dismissed.

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c. Eighth Amendment

An allegation that defendants violated the Eighth Amendment is pled next. The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Plaintiffs do not specify which clause of the Eighth Amendment they invoke. Although there is an allegation that some of the plaintiffs were arrested, there are no allegations regarding bail or fines. In addition, the cruel and unusual provision is inapplicable here because it applies only to those who have been convicted of a crime. *See City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 243-44 (1983). There are no allegations that any of the plaintiffs were ever convicted of a crime.

d. Thirteenth Amendment

Plaintiffs also allege that defendants violated the Thirteenth Amendment, the Amendment which abolished slavery and involuntary servitude. Plaintiffs appear to be arguing that they are "slaves" because they have to pay income taxes. That is patently frivolous. First, the Sixteenth Amendment to the Constitution gives Congress the power "to lay and collect taxes on incomes." Second, the Ninth Circuit has already considered and rejected such arguments. *See, e.g., Kesev v. Commissioner of Internal Revenue*, 457 F.2d 369, 370 (9th Cir. 1972). Accordingly, plaintiffs' claims under the Thirteenth Amendment are dismissed.

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e. Fourteenth Amendment

Plaintiffs' last 42 U.S.C. § 1983 claim involves the Fourteenth Amendment. Again, as with previous claims, plaintiffs do not specify which provisions of the Fourteenth Amendment they are invoking. Accordingly, they have failed to state a claim upon which relief can be granted under the Fourteenth Amendment. Nevertheless, to the extent plaintiffs are purporting to bring a claim under the equal protection clause, they fail. "To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Barron v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiffs have not alleged that they are members in a protected class and have not alleged any information in which that can be inferred.

6. 42 U.S.C. § 1985(2)

Next, plaintiffs allege that defendants violated 42 U.S.C. § 1985(2). "Section 1985(2) contains two clauses that give rise to separate causes of action." *See Portman v. County of Santa Clara*, 995 F.2d 898, 908 (9th Cir. 1993). The first clause concerns access to federal courts. *Id.* at 909. Although plaintiffs contend that they were denied access to this court, they provide no factual allegations to support that statement. The second clause concerns access to state or territorial courts. *Id.* However, "the second clause of section 1985(2) [requires] an allegation of class-based animus for the statement of a claim under that clause." *Id.*

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Here, plaintiffs have not alleged that they were denied access to any state courts because they are members of a protected class. Overall, plaintiffs have no claims under 42 U.S.C. § 1985(2).

7. 42 U.S.C. § 1985(3)

Plaintiffs also allege that defendants violated 42 U.S.C. § 1985(3). To properly plead a claim under § 1985(3), a complaint must have sufficient allegations that defendants' conduct was motivated by a racial or otherwise class-based, invidiously discriminatory animus. *Trerice v. Pedersen*, 769 F.2d 1398, 1402 (9th Cir. 1985). "Such animus constitutes an essential element of a cause of action under section 1985(3)." *Id.*

Here, plaintiffs' complaint does not allege the requisite animus, nor does it contain any factual allegations from which a race or class-based animus can be inferred. Because the complaint does not contain the necessary allegations, the 42 U.S.C. § 1985(3) claim is unsupportable and is hereby dismissed.

8. 42 U.S.C. §§ 1986 and 1988

Plaintiffs' next to last federal claims are brought pursuant to 42 U.S.C. §§ 1986 and 1988. First, as to plaintiffs' claim under § 1986, the Ninth Circuit has adopted the broadly accepted principle that a cause of action is not provided under 42 U.S.C. § 1986 absent a valid claim for relief under § 1985. *Trerice*, 769 F.2d at 1403. Accordingly, plaintiffs' § 1986 claim must be dismissed since their § 1985 claims were dismissed.

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Second, section 1988 of Title 42 of the United States Code provides that in certain civil rights actions the district court may, in its discretion, award the prevailing party reasonable attorneys' fees. Section 1988, however, does not provide an independent cause of action for civil rights violations. *See Brower v. Inyo County*, 817 F.2d 540, 546 (9th Cir. 1987), rev'd on other grounds, 489 U.S. 593 (1989). Thus, plaintiffs have failed to state a claim under § 1988.

9. 26 U.S.C. §§ 6402 and 7433

Lastly, plaintiffs allege 26 U.S.C. §§ 6402 and 7433 were violated. Section 6402 deals with credits and refunds. Plaintiffs do not clarify the nature of their claims under § 6402. Nevertheless, § 6402(f) provides that "[n]o court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), or (e)." Therefore, to the extent the plaintiffs are asking this court to restrain or review a reduction, this court lacks jurisdiction. As for plaintiffs' allegations under section 7433, they have already been discussed and dismissed above.

D. Plaintiffs' Motions

In addition to the above defense motions, the court has under submission various motions filed by the plaintiffs. First, plaintiffs have moved for entry of default judgment against defendants Pro Indiviso, Inc., Scona Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Second, plaintiffs

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request that the court sanction these defendants and strike their answers and motions for summary judgment. Lastly, plaintiffs seek a permanent injunction to restrain these defendants from selling any real properties obtained from the plaintiffs. Each of these motions will be discussed in turn.

1. Motion for Entry of Default Judgment

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, plaintiffs seek entry of default judgment against defendants Pro Indiviso, Inc., Scona, Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Rule 55 describes a two-step process by which a default judgment may be entered. First, under Rule 55(a), a plaintiff may request the clerk to enter a default against a party upon a showing that the party "has failed to plead or otherwise defend as provided by these rules. . . . " After entry of default, and upon application by the plaintiff, a default judgment may then be entered by the clerk or by the court pursuant to Rule 55(b).

Plaintiffs have improperly asked this court to enter a default judgment without first obtaining an entry of default by the clerk. Since plaintiffs' motion for entry of default judgment is improper, it is denied.

2. Motion for Sanctions

Next, plaintiffs ask the court to sanction these defendants and to strike their answers and motions due to

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their alleged default. An explanation of some terminology is in order here. When a defendant is in "default," it simply means that "the defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules." *See* Schwarzer, Tashima & Wagstaffe *Federal Civil Procedure Before Trial* ¶ 6:2 (1999). Defendant's default by itself, however, has no legal consequences. *Id.* at ¶ 6:3. "Until the default is 'entered' by the court clerk, defendant can still appear in the action." *Id.* In other words, "if no default has yet been 'entered,' the clerk must accept for filing defendant's pleadings or motions although they are filed late. Once they are filed, it is too late for entry of default, and defendant can proceed with its defense." *Id.*

Since no default was entered here, the clerk properly accepted the said defendants' answers and motions. Therefore, plaintiffs' motion for sanctions and to strike defendants' answers and motions is denied.

3. Motion for Permanent Injunction

Finally, plaintiffs seek a permanent injunction to restrain certain defendants from selling any real properties they may have obtained from the plaintiffs. In addition, plaintiffs seek to require defendants to return plaintiffs' real properties. The requirements for the issuance of a permanent injunction, which are not cited by the plaintiffs, are "the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law." *LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir. 1985), modified, 796 F.2d 309 (9th Cir. 1986). The court declines to address plaintiffs' request for a

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permanent injunction because plaintiffs did not even make an attempt to show the court that they meet the specific standards which permit the grant of a permanent injunction.

CONCLUSION

1. The IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted. For the reasons stated above, this action is now dismissed with prejudice as to *all* defendants.

2. The IRS defendants, defendant Richard Ward, and defendant Jared Harris' motion to dismiss pursuant to Rule 12(b)(6) is also granted.

3. These resolutions moot the need to decide any motions brought pursuant to Rule 12(b)(5) and Rule 4.

4. Plaintiffs' motion for entry of default judgment, for sanctions, and for a permanent injunction is denied.

5. The Clerk of Court is directed to close this file.

IT IS SO ORDERED.

Dated: October 21, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES
DISTRICT COURT

11/29/01 THU 18:06 FAX 402 342 5440 COCKLE PRINTING 2058

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

KOREEN MORGAN, et al.,
Plaintiffs,
v.
JAMES L. MASON, et al.,
Defendants.
/

CIV. NO. 98-0383-E-EJG/PAN

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

(Filed June 1, 1999)

This matter is before the court on numerous defendants' motions to dismiss. However, a review of the complaint in this action has caused the court to *sua sponte* issue this order. For the reasons stated below, the complaint is dismissed with leave to amend pursuant to Rule 8 of the Federal Rules of Civil Procedure.

DISCUSSION

Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e) requires that each averment of a pleading be "simple, concise and direct." These rules are designed to give the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A complaint which fails to comply with Rules 8(a) and 8(e) can be dismissed *sua sponte* by a court. *See McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996); *see also Nevijal v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981) (affirming a district court's dismissal of a complaint with prejudice for failure to

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comply with Rules 8(a) and 8(e)).Plaintiffs' complaint in the instant action fails under the standards of Rule 8. The complaint, brought by 13 plaintiffs, is 47 pages long with an additional 19 pages of exhibits. It contains 69 paragraphs and alleges numerous causes of action against 113 named defendants and 200 doe defendants. Broadly construed, it appears to allege a conspiracy between the IRS, City and County law enforcement, City and County prosecutors, City and County executives, and County and Federal judges to deprive plaintiffs of their constitutional rights. The complaint is verbose, convoluted and extremely difficult to comprehend. In addition, many of the allegations are irrelevant or stated in a conclusory fashion.

The complaint's major flaw, however, is its lack of specificity. No attempt is made to match up the specific factual allegations and the specific legal claims to specific defendants. In other words, the complaint does not state which defendants are liable on which of the claims. Instead, each claim says "defendants' " conduct violated various rights of plaintiffs, without saying which defendants. However, some of the claims cannot be pled against *all* of the defendants. For example, plaintiffs' 42 U.S.C. § 1983 claims can only be brought against individuals acting under color of state law and not against individuals acting under color of federal law. *See Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995). Thus, plaintiffs incorrectly allege § 1903 claims against the Internal Revenue Service defendants which plaintiffs contend acted under color of federal law. Other such examples exist in the complaint.

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In addition to the complaint's lack of specificity in regards to the defendants, the complaint contains hardly any dates. Specific time frames are seldom alleged making it difficult for the court to determine whether the applicable statutes of limitations have run.

The court is cognizant of the fact that the plaintiffs are acting in *pro per*.[1] However, although liberally construed, *pro per* pleadings "must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong." *Brazil v. United States Dept. of Navy*, 66 F.3d 193, 199 (9th Cir. 1995). Here, defendants have not been given fair notice of the claims against them.[2]

Although the court cannot rewrite plaintiffs' deficient complaint, the court will set forth some basic pleading requirements that plaintiffs must adhere to when drafting their amended complaint. First, plaintiffs must specify which defendants are liable for which claims. Some of the claims cannot be pled against all of the defendants. Second, plaintiffs must separate their claims so that only *one* claim is pled under each heading. As an example, on page 37 of the complaint the heading reads "Violations of 42 U.S.C. § 1983." Under this heading, it is alleged that defendants violated the First through Eighth and Thirteenth through Fourteenth Amendments. This is

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[1] However, the court notes that one of the plaintiffs, John Bach, is a former attorney. (Complaint at ¶ 38(c).)

[2] For instance, the IRS defendants note in their motion to dismiss that "[i]t is not clear from the Complaint which IRS defendants took actions against which plaintiffs." (IRS Defendants' Motion to Dismiss at 3.)

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really ten separate claims and should be pled as such. *See* Fed. R. Civ. P. 10(b) (requiring each claim founded upon a separate transaction or occurrence to be stated in a separate count).

Third, plaintiffs need only plead facts which are relevant to their various claims. Moreover, plaintiffs must identify which of those facts support which of their claims. Lastly, the court is in receipt of numerous defendants' motions to dismiss. Although the court declines to decide those motions at this time,[3] it notes that some of defendants' arguments appear to be meritorious. Thus, plaintiffs are encouraged to review the various defendants' motions and to make the appropriate adjustments to their amended complaint.

In that regard, the plaintiffs are also directed to read Rule 11 of the Federal Rules of Civil Procedure. Rule 11, which authorizes the court to impose sanctions when a complaint is frivolous, legally unreasonable, without factual foundation, or is brought for an improper purpose, explicitly applies to parties not represented by attorneys. *See Warren v. [Illegible]*, 29 F.3d 1386, 1390 (9th Cir. 1994).

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[3] Most of the defendants have moved to dismiss the complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. This rule provides that service must be made upon defendants within 120 days of the filing of the complaint. In determining whether to exercise its discretion to dismiss the complaint under this rule, the court must consider various factors such as whether the statute of limitations has run. Because plaintiffs' complaint it so poorly drafted, the court is unable to make those determinations at this time. However, defendants may renew their motions after the amended complaint is filed.

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CONCLUSION

Based on the foregoing and pursuant to Rule 8 of the Federal Rules of Civil Procedure, the court dismisses plaintiffs' complaint with leave to amend. Plaintiffs are given thirty days leave to amend from the filing date of this order. **Failure to timely amend will convert this dismissal to one with prejudice.** Plaintiffs are also admonished that failure to amend so as to comply with Rule 8 may also result in dismissal with prejudice. *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981).

In the event plaintiffs timely amend, *all* defendants (including the ones that have already answered or filed motions) shall answer or otherwise respond within twenty days after service of the amended complaint. To the extent the defendants' responses to plaintiffs' amended complaint will be identical to their responses to the initial complaint, the defendants may refile the same answers or motions.

IT IS SO ORDERED.

Dated: May 27, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES
DISTRICT COURT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN N. BACH; et al., Plaintiffs-Appellants, v. CINDY MASON; et al., Defendants-Appellees. and STATE OF IDAHO TAX COMMISSION; et al., Defendants.	No. 99-36180 DC# CV-98-00383-EJG Idaho (Boise) ORDER (Filed May 25, 2001)

Before: LEAVY, THOMAS and RAWLINSON, Circuit Judges

The panel has voted to deny appellants' petition for panel rehearing. Judges Thomas and Rawlinson have voted to deny the petition for rehearing en banc, and Judge Leavy so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

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U.S. Constitution

AMENDMENT I – FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL, ASSEMBLAGE; PETITION OF GRIEVANCES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV – CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

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42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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42 U.S.C. § 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest,

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interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges

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and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States, or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation against any one or more of the conspirators.

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42 U.S.C. § 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed shall be liable to the party injured, or

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his legal representatives for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

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42 U.S.C. § 1988. Proceedings in vindication of civil rights.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1998 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing

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party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

KOREEN MORGAN, et al.,
Plaintiffs,
v.
JAMES L. MASON, et al.,
Defendants.
_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER DENYING DEFENDANTS' REQUEST FOR ADDITIONAL TIME TO FILE AN ANSWER

(Filed Sep. 3, 1999)

The court is in receipt of defendants Pro Indiviso, Inc., Scona, Inc., Alva A. Harris, Grant E. Hann, Kent E. Carlson, Carolee C. Carlson, and Evelyn C. Harris' request for an order granting them additional time in which to file their answer. Because defendants have filed this request *after* their answer was due, defendants' request is DENIED.

IT IS SO ORDERED.

Dated: September 1, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT COURT

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